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MICHAEL F. MCCABE, Bar No. 111151  
2 MICHELLE R. BARRETT, Bar No. 197280  
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7 mmccabe@littler.com, mbarrett@littler.com,  
8 kowens@littler.com, jcurley@littler.com

9 Attorneys for Defendants  
HSBC MORTGAGE CORPORATION (USA)  
10 AND HSBC BANK USA, N.A.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 Philip Wong, Frederic Chaussy, and Leslie  
15 Marie Shearn, individually, on behalf of all  
16 others similarly situated, and on behalf of  
the general public,

17 Plaintiffs,

18 v.

19 HSBC Mortgage Corporation (USA);  
20 HSBC Bank USA, N.A.; and DOES 1  
through 50, inclusive,

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF MICHELLE R.  
BARRETT IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR LEAVE TO  
AMEND FIRST AMENDED COMPLAINT**

Date: August 22, 2008  
Time: 9:00 a.m.  
Courtroom: 7 (19th Floor)  
Judge: Hon. Maxine M. Chesney

Complaint filed: May 7, 2007  
FAC filed: June 29, 2007  
Trial Date: Not Yet Set

1 I, Michelle R. Barrett, hereby declare and state:

2 1. I am a shareholder with Littler Mendelson, which is counsel of record for  
3 Defendants HSBC Mortgage Corporation (USA) ("HMCU") and HSBC Bank USA, N.A. ("HBUS")  
4 in this action. I have personal knowledge of the facts set forth below. If called as a witness, I could  
5 and would testify to the following.

6 2. Plaintiffs' counsel, through Bryan Schwartz, initially broached the subject of  
7 amending their First Amended Complaint in an e-mail message addressed to me on January 9, 2008.  
8 Attached hereto as Exhibit A is a true and correct copy of this e-mail correspondence.

9 3. The issue of Plaintiffs amending their First Amended Complaint was next  
10 discussed in a February 8, 2008 letter sent by Plaintiffs' counsel Paul Lukas to me. Attached hereto  
11 as Exhibit B is a true and correct copy of a letter I received from Plaintiffs' counsel Paul Lukas on  
12 February 8, 2008.

13 4. In response to this letter, I sent a letter dated February 11, 2008 to Mr. Lukas'  
14 attention. Attached hereto as Exhibit C is a true and correct copy of my February 11, 2008 letter  
15 sent to Mr. Lukas.

16 5. Plaintiffs' desire to amend their First Amended Complaint was not raised  
17 again until March 5, 2008. At that time, Mr. Schwartz sent me an e-mail message related to  
18 Plaintiffs' proposed amendments. Attached hereto as Exhibit D is a true and correct copy of the  
19 March 5, 2008 e-mail I received from Mr. Schwartz.

20 6. On March 11, 2008, I summarized the parties' discussions regarding  
21 Plaintiffs' request to amend their First Amended Complaint in a letter addressed to Mr. Schwartz and  
22 to Mr. Lukas. In this letter, I stated that Defendants would not agree to any of the amendments  
23 proposed in our earlier discussions. Attached hereto as Exhibit E is a true and correct copy of a  
24 letter I sent to Mr. Schwartz and Mr. Lukas on March 11, 2008.

25 7. During the meet and confer process, Plaintiffs' counsel verbally notified me  
26 that Plaintiffs intended to replace named Plaintiff Leslie Marie Shearn with another named plaintiff.  
27 On that basis, until very recently Plaintiffs have either failed or refused to respond to written  
28 discovery requests concerning Ms. Shearn. Moreover, Plaintiffs have failed, until very recently, to

1 offer any dates for Ms. Shearn's deposition, despite the fact that Defendants have been asking to  
2 depose Ms. Shearn for seven months. The reason I have said "either failed or refused to respond to  
3 written discovery" is because Plaintiffs' counsel never provided me with any reasons as to why they  
4 did not timely respond to the written discovery propounded. Further, each time I brought up the  
5 subject of this failure to respond, Plaintiffs' counsel would never address the issue.

6 8. Although I have requested multiple times that named Plaintiff Wong, who  
7 lives in the Bay Area, be produced to allow Defendants to finish his deposition, Plaintiffs' counsel  
8 Mr. Schwartz has refused to re-produce Plaintiff Wong claiming that Plaintiff Wong need only to  
9 have "made himself available" for a seven hour period in one day and that if the deposition was not  
10 finished when Plaintiff Wong made himself available that Plaintiff Wong did not have to appear to  
11 complete his deposition. Defendants have not exceeded the seven hour time limit imposed by  
12 Federal Rule of Civil Procedure 30(d)(1).

13 9. Attached hereto as Exhibit F is a true and correct copy of the relevant and  
14 cited pages of the deposition transcript of Jeanette Jennings. Ms. Jennings' deposition was taken on  
15 December 19, 2007.

16 10. Attached hereto as Exhibit G is a true and correct copy of the relevant and  
17 cited pages of the deposition transcript of named Plaintiff Philip Wong. Mr. Wong's deposition was  
18 taken on November 29, 2007.

19 11. Attached hereto as Exhibit H is a true and correct copy of the relevant pages  
20 of the deposition transcript of proposed named plaintiff Karen Flanagan. Ms. Flanagan's deposition  
21 was taken on July 10, 2008.

22 I declare under penalty of perjury under the laws of the State of California and the  
23 United States of America that the foregoing declaration is true and correct to the best of my personal  
24 knowledge. Executed this 31<sup>st</sup> day of July, 2008, in San Francisco, California.



MICHELLE R. BARRETT

25  
26  
27  
28 Firmwide: 86007617.1 023404.1043

# **EXHIBIT A**

**Barrett, Michelle R.**

---

**From:** Schwartz, Bryan [schwartz@nka.com]  
**Sent:** Wednesday, January 09, 2008 1:52 PM  
**To:** Barrett, Michelle R.  
**Cc:** Honkanen, Melissa  
**Subject:** amending complaint

Michelle,

I am conferring with you, via this email, regarding our intention to amend the complaint in several respects. If you agree, then we will amend unopposed, and if you disagree, then we will file our motion soon. As I'm sure you know, the standard for a Court accepting a motion to amend at this stage of litigation is extremely permissive, but if you want to go through the exercise of briefing it, let me know.

For now, we plan to:

- 1) Add a couple/few additional named plaintiffs
- 2) Add minimum wage claims, which a number of our clients have alleged in their declarations (which you already have); and
- 3) Add Pennsylvania state claims.

Let me know what you think.

Bryan

the <b>Voice</b> for employees	
<b>Nichols Kaster &amp; Anderson, LLP</b>	
<b>Bryan Schwartz</b> Attorney	One Embarcadero Center Suite 720 San Francisco, California 94111
415.277.7236 direct	<a href="mailto:schwartz@nka.com">schwartz@nka.com</a>
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877.777.0622 main	<a href="http://overtimecases.com">overtimecases.com</a>

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7/14/2008

# **EXHIBIT B**

**Barrett, Michelle R.**

---

**From:** Honkanen, Melissa [mhonkanen@nka.com]  
**Sent:** Friday, February 08, 2008 2:05 PM  
**To:** Tichy, George J.; Barrett, Michelle R.  
**Cc:** Lukas, Paul  
**Subject:** Discovery  
**Attachments:** LTR re Discovery Meeting.pdf; Attachment.pdf

Counsel: Please see the attached.

<b>the Voice for employees®</b>	
<b>Nichols Kaster &amp; Anderson, LLP</b>	
<b>Melissa Honkanen</b> Legal Assistant	One Embarcadero Center Suite 720 San Francisco, CA 94111
415.277.7241 direct	<a href="mailto:honkanen@nka.com">honkanen@nka.com</a>
415.277.7238 fax	<a href="http://nka.com">nka.com</a>
877.777.0622 main	<a href="http://overtimecases.com">overtimecases.com</a>

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7/14/2008

the Voice for employees

**Nichols Kaster & Anderson, LLP**

February 8, 2008

**VIA EMAIL AND U.S.MAIL**

Michelle Barrett  
Littler Mendelson, P.C.  
650 California Street  
20th Floor  
San Francisco, CA 94108-2693

**Re: *Wong et al v. HSBC et al*  
*Our File # 10609-01*  
*Court File #07-2446***

Dear Michelle:

Thank you for meeting with me yesterday to discuss the outstanding discovery issues. It is my intention to accurately describe the status of each of these issues as a result of our conference. If I fail to do so in any respect, please let me know.

1. **Mr. Lampka's Deposition.** You gave me the name of the attorney (Preston Zarlock at Phillips Laytle) who has been retained to represent HSBC Finance and Mr. Lampka at the deposition. You also warned me, however, that Mr. Zarlock is in, or is about to go into, trial and may be difficult to reach. I suggest that HSBC Finance agree to have you or another Littler lawyer represent them at the deposition as you did last month in the depositions we took in Chicago. In the meantime, I will try and contact Mr. Preston Zarlock to schedule the deposition.

2. **Motion to Amend the Complaint.** I informed you that we intended to bring a motion to amend to: a) add HSBC Finance as a defendant; b) add Pennsylvania state law claims, c) add a Pennsylvania representative plaintiff; d) and add a representative Plaintiff for New York and New Jersey. You advised me that Defendant was not inclined to stipulate to any amendment to the Complaint, but said you would discuss it with your client. Please let me know as soon as possible whether Defendant is willing to stipulate to any or all of these amendments to the Complaint.

3. **Plaintiff Chaussy's Deposition.** I informed you that Mr. Chaussy is generally available on Thursdays and Fridays, and that we were available almost any Thursday or Friday in March or April with the exception of the last week of each month. You agreed to get back to me with some proposed dates.



4. **Plaintiff Shearn's Deposition.** As I informed you, Ms. Shearn has been difficult for us to communicate with these days. I will let you know as soon as possible when we are able to contact her and provide some proposed dates.

5. **Plaintiff Wong's Deposition.** I informed you that it was our position that Mr. Wong made himself available for a full day of deposition, and to the extent that the deposition concluded short of the seven (7) hour limit excluding breaks, it was Defendants' choice to end it. I believe this position is consistent with what we told Defendant when it decided to conclude the deposition. However, since neither of us were present at the deposition, we agree that you would talk to Mr. Tichey, and I would speak to Bryan, and we would reconvene before we declared an impasse on the issue.

6. **Discovery Responses.** Rather than march through each requests individually, we discuss Defendant's responses more broadly. Overall, I was generally satisfied that Defendants are continuing its efforts to locate documents and respond to our requests as you discussed with Bryan previously. However, we did discuss a few specific requests that need to be mentioned here.

a. **Payroll Documents.** You informed me that you are experiencing some difficulty obtaining this information from HSBC Finance, but you are working on finding the documents. We understand, of course, the difficulty of obtaining such information, but as I informed you, this information is critical not just for our damage analysis, but will likely impact liability issues as well. Please advise as to how soon Defendants expect to produce this information.

b. **Manager Lists.** You informed me that you are still investigating whether Defendants are able to produce the manager lists in excel format beyond a list of those who are currently in place in such positions. I informed you that based on past experience, I believed Defendants could provide that information from its PeopleSoft program. Please let me know what you find out and when we can expect to obtain this important information.

c. **FLSA Training Materials.** You informed me that you are having difficulty opening the on-line FLSA training materials and will produce them as soon as you are able to convert them into a transferable format.

7. **Plaintiffs' Second Set of Request for Production.** I informed you that we have prepared a second set of requests for production, and I will serve that set under separate cover. As we discussed, I went through these requests and eliminated those that could be considered covered by one of our previous requests. I have attached a spreadsheet to this letter identifying the specific things we are seeking that we consider included in the previous requests. If you disagree regarding any of them, I will formally serve them.

Thank you again for meeting with me, and I remain available to resolve these or any other issues with you.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Lukas', with a stylized flourish at the end.

Paul J. Lukas

# **EXHIBIT C**

**Barrett, Michelle R.**

---

**From:** Barrett, Michelle R.  
**Sent:** Monday, February 11, 2008 5:21 PM  
**To:** Lukas, Paul  
**Subject:** Wong et al. v. HMCU, HBUS: Response to February 8 Letter  
**Attachments:** Doc3.pdf

Paul,

Attached please find my letter, which clarifies and/or responds to issues discussed in our February 7 telephone conversation.

Michelle

Michelle R. Barrett  
Littler Mendelson, P.C.  
650 California Street, 20th Floor  
San Francisco, California 94108  
415.433.1940 general  
415.677.4089 direct telephone  
415.743.6618 direct facsimile  
mbarrett@littler.com  
Assistant: Rosie T. Yee, ext. 5016364

7/14/2008



February 11, 2008

Michelle R. Barrett  
Direct Fax: 415.743.6618

**VIA E-MAIL/PDF**

Paul J. Lukas, Esq.  
Nichols Kaster & Anderson, LLP  
4600 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402

Re: **Philip Wong, et al. v. HSBC Mortgage Corp., et al.**  
**USDC Action No. C 07-2446 MMC**

- *Response to February 8, 2008 Letter re Discovery Issues and Plaintiffs' Request to Amend First Amended Complaint*

Dear Paul:

Thank you for your letter dated February 8, 2008, which summarizes topics covered in our February 7 telephone call. By this letter, I will clarify information listed in your letter, which I do not believe is completely accurate.

**Robert Lampka's Deposition**

As discussed, Preston Zarlock of Phillips Lytle has been retained to represent Mr. Lampka in his deposition. I wish to clarify that Mr. Zarlock's firm is "Phillips Lytle," rather than "Phillips Laytle." Additionally, I am not certain as to whether I stated that Mr. Zarlock will represent HSBC Finance Corporation at this deposition or not. If I did make this statement, I misspoke, because I am only aware that Mr. Zarlock has been retained to represent Mr. Lampka. It is my understanding that Mr. Zarlock has sent you a letter regarding this matter and that you and he will work together in handling subpoena issues and in scheduling a deposition date. I ask that you and Mr. Preston keep me apprised of the date agreed upon so that I can inform my clients.

**Motion to Amend the First Amended Complaint**

When we spoke on February 7, I had only been notified of Plaintiffs' desire to amend the First Amended Complaint as to amendments "b" and "c," which are listed in your February 8 letter. Until we spoke on February 7, I had not been told about the desire to add HSBC Finance Corporation as a defendant in this case. As discussed, because I was aware of proposed amendments "b" and "c," I was able to discuss those with my clients. These are not amendments to which my clients will agree.

ALABAMA

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COLORADO

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MASSACHUSETTS

MINNESOTA

MISSOURI

NEVADA

NEW JERSEY

NEW YORK

NORTH  
CAROLINA

OHIO

PENNSYLVANIA

RHODE ISLAND

SOUTH  
CAROLINA

TEXAS

VIRGINIA

WASHINGTON

February 11, 2008  
VIA E-MAIL/PDF  
Page 2

Thus, you will need to file a motion to request such amendments. With regard to adding HSBC Finance Corporation as a defendant, you indicated that part of the reason for adding this entity to the action would be to avoid the "problems" Plaintiffs had encountered in taking depositions and getting documents. I asked that I be given the opportunity to discuss this matter with my clients before providing you with an answer as to their willingness to agree to this amendment. I have left word with my clients on this subject; however, my contact is away from the office through February 13. As such, we have not yet been able to thoroughly discuss this matter. Once I receive instruction from my client on this issue, I will contact you.

**Plaintiff Chaussy's Deposition**

Thank you for providing dates on which Mr. Chaussy will be available for deposition. I am working to determine a date within those parameters that will work for us. I will contact you soon.

**Plaintiff Shearn's Deposition**

While you indicated that you had not been able to get into contact with Ms. Shearn, we did not discuss you actually providing my office with dates for her deposition. Instead, you indicated that it was likely that Ms. Shearn would no longer remain a named Plaintiff in this case. While I certainly not hold you to this statement, I wish to be clear that my clients are not amenable to waiting months to take Ms. Shearn's deposition. We will wait to see if Ms. Shearn is available to provide responses to Defendants' document requests, as well as documents responsive to the requests. If she fails to do so in a timely manner, Defendants will take the necessary actions to request that Ms. Shearn be dismissed from the case and/or declared an improper representative.

**Plaintiff Wong's Deposition**

I have spoken with Mr. Tichy, who took Plaintiff's deposition on November 29, 2007. Although Plaintiff may have been present in our offices that day for a deposition, he was not "available" for the full seven hours. In fact, Plaintiff and Mr. Schwartz requested and took a number of breaks that day. It was not until 5:26 p.m. that the deposition adjourned for the day and Mr. Tichy expressly reserved the right to complete Plaintiff Wong's deposition. Given the fact that Mr. Tichy waited to adjourn the deposition after close of business and not early in the day, we believe it is appropriate and reasonable for Plaintiff Wong to appear and to complete his deposition. If you are unwilling to produce Plaintiff Wong again for his deposition, please let me know so that Defendants can bring the appropriate motion before the Court. If you are willing to produce Plaintiff Wong again, please provide me with proposed dates for the deposition.

February 11, 2008  
VIA E-MAIL/PDF  
Page 3

**Discovery Responses**

With regard to the specific documents referenced in your February 8 letter, I wish to clarify my statement related to payroll records. I did not specifically state that HSBC Finance Corporation possesses the payroll documents in question. Rather, I stated that I had had some difficulty determining which entity had such documents. Both you and I hypothesized that the entity might in fact be HSBC Finance Corporation; however, I did not affirmatively state that this was the entity possessing such records. I will continue to work on obtaining these records using the parameters upon which Mr. Schwartz and I previously agreed.

**Plaintiffs' Second Set of Request for Production**

By virtue of the fact that your requests and your letter references a "Second Set" of document requests, I presume that these new requests are directed at HSBC Mortgage Corporation (USA), as HSBC Bank USA, N.A. has never been served with any document requests. Please note, however, that this second set of requests does not show the identity of the party requested to respond, as is customary in discovery practice. HSBC Mortgage Corporation (USA) will thus be the only party responding to these requests unless another set of requests specifying a different party is served.

Finally, with regard to the spreadsheet of documents attached to your letter, please be advised that we have already produced some FLSA training materials or documents used by HSBC Mortgage Corporation (USA) prior to the implementation of the web-based training. If any other documents exist, we will certainly supplement our production.

Very truly yours,

/s/ Michelle R. Barrett

MICHELLE R. BARRETT

# **EXHIBIT D**



**Barrett, Michelle R.**

---

**From:** Schwartz, Bryan [schwartz@nka.com]  
**Sent:** Wednesday, March 05, 2008 11:10 AM  
**To:** Barrett, Michelle R.  
**Cc:** Honkanen, Melissa; Lukas, Paul  
**Subject:** RE: amending complaint

Michelle,

I note that in my absence, Paul and you corresponded to some extent regarding our proposed motion to amend. One issue which appears to have been omitted from your discussion related to our minimum wage claims (see below). An additional issue which has arisen is our desire to add HSBC Finance Corporation as a Defendant.

Please give me the final status of Defendant's position on all of the amendments we are seeking.

Thanks,

Bryan

---

**From:** Schwartz, Bryan  
**Sent:** Wednesday, January 09, 2008 1:52 PM  
**To:** 'Barrett, Michelle R.'  
**Cc:** Honkanen, Melissa  
**Subject:** amending complaint

Michelle,

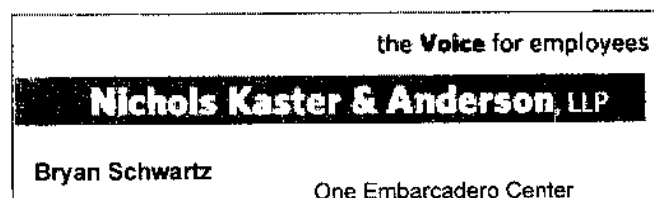
I am conferring with you, via this email, regarding our intention to amend the complaint in several respects. If you agree, then we will amend unopposed, and if you disagree, then we will file our motion soon. As I'm sure you know, the standard for a Court accepting a motion to amend at this stage of litigation is extremely permissive, but if you want to go through the exercise of briefing it, let me know.

For now, we plan to:

- 1) Add a couple/few additional named plaintiffs
- 2) Add minimum wage claims, which a number of our clients have alleged in their declarations (which you already have); and
- 3) Add Pennsylvania state claims.

Let me know what you think.

Bryan



7/14/2008

Attorney	Suite 720 San Francisco, California 94111
415.277.7236 direct	<a href="mailto:schwartz@nka.com">schwartz@nka.com</a>
415.277.7238 fax	<a href="http://nka.com">nka.com</a>
877.777.0622 main	<a href="http://overtimecases.com">overtimecases.com</a>

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7/14/2008

# **EXHIBIT E**

**Barrett, Michelle R.**

---

**From:** Barrett, Michelle R.  
**Sent:** Tuesday, March 11, 2008 7:57 PM  
**To:** Lukas, Paul; Schwartz, Bryan  
**Cc:** Honkanen, Melissa  
**Subject:** Letter re Discovery, Amending Complaint, etc.  
**Attachments:** Document.tif

Paul and Bryan,

First, Bryan, welcome back to the office. I hope you enjoyed your time away. This letter responds to Paul's letter, your email and Melissa's voicemail. I'm back to my ridiculous schedule of back to back calls, meetings, and other business travel etc., so I'm relying more on my team to assist with things, but I'll still be the main contact on as much as possible.

Michelle

Michelle R. Barrett  
Littler Mendelson, P.C.  
650 California Street, 20th Floor  
San Francisco, California 94108  
415.433.1940 general  
415.677.4089 direct telephone  
415.743.6618 direct facsimile  
mbarrett@littler.com  
Assistant: Rosie T. Yee, ext. 5016364

7/14/2008



March 11, 2008

Michelle R. Barrett  
Direct Fax: 415.743.6618

**VIA E-MAIL/PDF**

Paul J. Lukas, Esq.  
Nichols Kaster & Anderson, LLP  
4600 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402

Bryan J. Schwartz, Esq.  
Nichols Master & Anderson, LLP  
One Embarcadero Center, Suite 720  
San Francisco, CA 94111

Re: ***Philip Wong, et al. v. HSBC Mortgage Corp., et al.***  
**USDC Action No. C 07-2446 MMC**

- *Plaintiffs' Inquiry regarding Amending First Amended Complaint*
- *Plaintiff Shearn's Deposition and Discovery Responses*
- *Motion to Compel Completion of Plaintiff Wong's Deposition*
- *Documents Responsive to Plaintiffs' Discovery Requests*
- *Responses to Plaintiffs' Second Request for Production to HMCU*
- *Opt-In Depositions*

Dear Paul and Bryan:

This letter responds to Paul's March 3 letter and Bryan's subsequent March 5 e-mail, as well as Melissa Honkanen's voicemail message left today regarding discovery responses. Further, it discusses Defendants' wish to take further depositions of opt-in Plaintiffs.

**Inquiry Regarding Amending First Amended Complaint**

Bryan's March 5 e-mail clarified that Plaintiffs not only wish to add named plaintiffs to the case, add Pennsylvania law state claims, and HSBC Finance Corporation as a Defendant, but that you also wished to add minimum wages claims to the case. Defendants' position on all of these items is that the rules only allow one amendment to a Complaint as a matter of right. This amendment was made in June 2007. Thus, Defendants will not agree to any of the amendments which Plaintiffs propose. We anticipate that Plaintiffs will thus make a Motion to the Court to amend

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MASSACHUSETTS

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MISSOURI

NEVADA

NEW JERSEY

NEW YORK

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CAROLINA

OHIO

PENNSYLVANIA

RHODE ISLAND

SOUTH  
CAROLINA

TEXAS

VIRGINIA

WASHINGTON

March 11, 2008  
VIA E-MAIL/PDF  
Page 2

the Complaint. We request that you confer with us as to the date to ensure we do not encounter the same scheduling problems we encountered with the Conditional Certification Motion.

**Plaintiff Shearn's Deposition and Discovery Responses**

It has been over a month since we requested dates on which to take Ms. Shearn's deposition. We ask that you provide us with potential dates sometime in the next week so that we may coordinate taking her deposition, along with other depositions in the New York and New Jersey areas. If Ms. Shearn is located somewhere other than New York or New Jersey please advise us immediately so we can make the necessary arrangements to take her deposition elsewhere.

Please also note that Ms. Shearn's failure to respond to the discovery propounded, which was due on March 3, waives all objections to discovery, including objections regarding work product and privilege. We ask that you confirm whether you will be dismissing Ms. Shearn as a representative Plaintiff in this matter and when you will do so, so that we may determine whether we need to make any motions related to her status as a representative Plaintiff, her failure to respond to discovery, and/or taking her deposition.

**Continuing and Completing Plaintiff Wong's Deposition**

Paul's March 3 letter references agreeing to a "second deposition" of Plaintiff Wong. To be clear, we have not requested a second deposition of Mr. Wong. Rather, we have asked that he be produced so that we may conclude his deposition, as allowed under the Federal Rules of Civil Procedure. We ask that Plaintiffs reconsider their position on this issue once again, as the Rules are clear that a party is entitled to at least seven (7) hours of another party's deposition. As you are aware, Magistrate Spero prefers not to deal with discovery motions; as such, we believe this is an issue the parties can work together upon to resolve.

**Documents Responsive to Plaintiffs' Discovery Requests**

Thank you for the clear listing of documents you believe to be relevant and most important with regard to Plaintiffs' previous document requests. I am working with HMCU to determine what documents can quickly be obtained and produced. I believe I should have a more concrete answer by the end of the week.

**Responses to Second Set of Discovery Requests to HMCU**

Today, Melissa Honkanen left a voicemail asking whether Defendant HSBC Mortgage Corporation (USA) would be responding to the Second Set of Requests for Production of Documents propounded. Responses are due on March 13, 2008. I am told that responses to those requests will be provided to Plaintiffs on that date.

March 11, 2008  
VIA E-MAIL/PDF  
Page 3

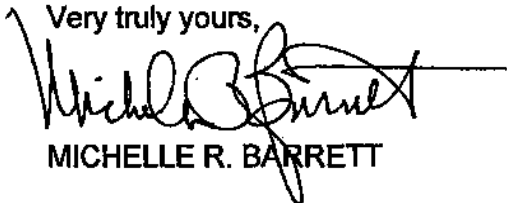
**Opt-In Depositions**

Please be advised that we will begin to take depositions for a number of opt-in Plaintiffs in this matter. Rather than unilaterally scheduling dates, we wish to work with you to find mutually agreeable dates in the near future. At present, we wish to schedule the depositions of:

- Larry Lee in Northern California
- Marilen Darcy in Southern California
- Alysse Gora in New York
- Peter Malone in New York
- Jason Shultes in New Jersey or Pennsylvania

Additionally, we still wish to take Ms. Shearn's deposition. Please provide us with these individuals locations, so that we may make travel plans. In particular, please let us know as soon as possible whether any of the following dates would work for the depositions of Mr. Lee and Ms. Darcy: March 25, 27, 28, 31 or April 2, 3, 4. Further, please provide dates for the others that may work later in April. If we are not able to schedule dates that are mutually agreeable in the near future, we will move forward to notice the depositions.

Very truly yours,



MICHELLE R. BARRETT

Firmwide:84557796.1 023404.1043

# **EXHIBIT F**



Jeanette Jennings 30(b)(6) 12/19/2007  
Philip Wong, et al. v. HSBC Mortgage Corporation, et al.\

RECEIVED

1

JAN 03 2008

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LITTLER MENDELSON

PHILIP WONG, FREDERIC )  
CHAUSSEY, and LESLIE MARIE )  
SHEARN, individually, on )  
behalf of all others )  
similarly situated, and )  
on behalf of the general )  
public, )

COPY

Plaintiffs, )

vs. )

No. 3:07-cv-2446 MMC

HSBC MORTGAGE CORPORATION )  
(USA); HSBC BANK USA, )  
N.A.; and DOES 1 through )  
50, inclusive, )

Defendants. )

30(b)(6) VIDEOTAPED DEPOSITION OF  
JEANETTE JENNINGS

Taken December 19, 2007

Commencing at 9:08 a.m.

REPORTED BY: MELANIE L. HUMPHREY-SONNTAG, RDR, CRR, CSR  
PARADIGM REPORTING & CAPTIONING INC.

1400 RAND TOWER

527 MARQUETTE AVENUE SOUTH

MINNEAPOLIS, MINNESOTA 55402-1331

612-339-0545 \* 800-545-9668 \* Fax 612-337-5575

Jeanette Jennings 30(b)(6) 12/19/2007

Philip Wong, et al. v. HSBC Mortgage Corporation, et al.\

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1 Q. You don't --

2 A. But they always receive their -- their  
3 biweekly draw.

4 Q. You don't have a -- a different minimum draw  
5 for employees in New York or California or other  
6 states; is that right?

7 A. No. The minimum is the minimum is the  
8 minimum.

9 Q. And are you aware that loan officers are  
10 required to reimburse the company for application  
11 fees where a loan application fails?

12 A. That's a broad statement. They don't have  
13 to pay it back if the loan is declined unless they  
14 never collected the fee and we've incurred the  
15 expenses, and that's actually in -- in the actual  
16 incentive plan.

17 So, for example, if I've taken a loan  
18 application but I did not collect the fee from the  
19 customer and it's gone through the processing, at  
20 the end of the processing that customer is then  
21 declined but I still have not collected that fee  
22 from the customer, I can -- I can get -- I can get  
23 that deducted, yes.

24 If it's because it's a regular decline, no,  
25 and I've done everything right, but that's under

Jeanette Jennings 30(b)(6) 12/19/2007

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1 errors and omissions and, I think, exclusions, that,  
2 if they fail to collect the necessary fees or if  
3 it's through their own negligence, fraudulent --  
4 whatever it might be -- then they could be -- have  
5 those -- those fees deducted from commissions, yes.

6 Q. Do you know to what extent loan officers are  
7 encouraged not to collect application fees by their  
8 supervisors in order to close more deals?

9 A. They shouldn't be encouraged to do that at  
10 all. I'm not familiar with that practice at all.  
11 That would go against -- because we're incurring  
12 expenses for the appraisals and what needs to be  
13 done, so I would find that hard to believe that  
14 they're encouraged to not collect the fees.

15 That doesn't make sense.

16 Q. Okay. Well, we have sworn testimony that  
17 that's exactly what's happening, so --

18 A. Oh.

19 Q. -- and documentation of that happening, so  
20 I'm wondering -- and so -- but it's your testimony  
21 that you're not aware of that happening?

22 A. Absolutely not. No.

23 Q. And do you have something -- a published  
24 policy -- that is specifically contrary to that  
25 practice of supervisors encouraging or requiring

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1 their loan officers not to collect application fees?

2 A. That would be a business policy. It would  
3 be a policy that's directed by HR, so I couldn't  
4 comment to that. If they've published anything,  
5 I -- I don't know.

6 But the plan itself speaks to it, that, if  
7 they don't collect the fees, they will be charged.

8 Q. Where is that? The plan that --

9 A. Probably under --

10 Q. -- in Exhibit 3?

11 A. And, again, if it is not in this one, it is  
12 in the newest versions.

13 Could be under "Exclusions." It could be  
14 under the -- it's under the new plans most  
15 definitely, but I need to -- I need to look at that.

16 I don't see it in this particular plan.

17 Q. But you believe that it's in a new plan?

18 A. Absolutely.

19 Q. So is it your testimony that -- that all  
20 loan officers nationwide earn \$23,660 or more every  
21 year that they're employed?

22 A. Whatever the Federal minimum is, and I think  
23 that -- it changed this year if -- it was 23.  
24 Previously it was just 23,000.

25 I would say that that would be at least that

Jeanette Jennings 30(b)(6) 12/19/2007  
Philip Wong, et al. v. HSBC Mortgage Corporation, et al.\

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1 STATE OF ILLINOIS )

) SS.

2 COUNTY OF DU PAGE )

3  
4 I, Melanie L. Humphrey-Sonntag,  
5 Certified Shorthand Reporter No. 084-004299, CSR,  
6 RDR, CRR, FAPR, and a Notary Public in and for the  
7 County of DuPage, State of Illinois, do hereby  
8 certify that previous to the commencement of the  
9 examination, said witness was duly sworn by me to  
10 testify the truth; that the said deposition was  
11 taken at the time and place aforesaid; that the  
12 testimony given by said witness was reduced to  
13 writing by means of shorthand and thereafter  
14 transcribed into typewritten form; and that the  
15 foregoing is a true, correct, and complete  
16 transcript of my shorthand notes so taken as  
17 aforesaid.

18 I further certify that there were present at  
19 the taking of the said deposition the persons and  
20 parties as indicated on the appearance page made a  
21 part of this deposition.

22 I further certify that I am not counsel for  
23 nor in any way related to any of the parties to this  
24 suit, nor am I in any way interested in the outcome  
25 thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my Notarial Seal this 28th day of December, A.D. 2007.

*M. S. Humphrey Jones*  
Certified Shorthand Reporter

**Registered Diplomat Reporter**

**"OFFICIAL SEAL"**  
**M. L. HUMPHREY-SONNTAG**  
 Notary Public, State of Illinois  
 My Commission Expires 02/17/10

**Certified Realtime Reporter**

Fellow of the Academy of  
Professional Reporters

My commission expires  
February 17, 2010

**11**

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# **EXHIBIT G**

1  
2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA  
4 SAN FRANCISCO DIVISION

5 - - - - -x  
6 Philip Wong, Frederic Chaussy  
7 and Leslie Marie Shearn,  
8 individually, on behalf of all  
9 others similarly situated, and on  
10 behalf of the general public,

11 Plaintiffs,

12 -against-

13 HSBC Mortgage Corporation  
14 (USA); HSBC Bank (USA),  
15 N.A.; and DOES 1  
16 through 50, inclusive,

17 Defendants.  
18 - - - - -x

RECEIVED

JUL 23 2008

LITTLER MENDELSON

Index No.  
C07 2446  
MMC (ECF)

19 VIDEOTAPE DEPOSITION of KAREN FLANAGAN, taken  
20 by Defendants, held at the offices of Littler  
21 Mendelson, 532 Broad Hollow Road, Suite 142, Melville,  
22 New York on Thursday, July 10, 2008, commencing at  
23 9:28 a.m., before Jean Wilm, a Registered Professional  
24 Reporter, Certified LiveNote Reporter and Notary  
25 Public within and for the State of New York.



1 Flanagan

2 A No.

3 Q -- of compensation that was  
4 provided?

5 A No. They said they were working  
6 it out.

7 Q Did you ever receive any  
8 compensation for deposits received by the bank?

9 A I received a \$1,000 bonus, which  
10 was not anywhere what I was told it would be.

11 Q From whom did you receive a \$1,000  
12 bonus?

13 A Kevin MacPherson, the branch  
14 manager for the bank.

15 Q When did you receive this?

16 A I don't recall which paycheck. I  
17 don't recall which paycheck. I know I got it,  
18 but I don't recall which paycheck.

19 Q Do you recall in what year?

20 A '07.

21 Q Was this the end of your  
22 employment?

23 A Towards the -- towards the end.

24 Q In 2006, while you were working  
25 for HSBC Mortgage Corporation, were you paid

Flanagan

more than \$100,000?

A Yes.

Q During that year, you held two positions: One was the position as the senior mortgage loan consultant and also as a Premier mortgage consultant; is that right?

A Yes.

MS. HAUGEN: Objection.

THE WITNESS: Sorry.

Q In 2006 did you receive a W-2 from HSBC Mortgage Corporation for the amount in excess of \$100,000?

A I don't remember, nor can I find my 2006 W-2s. I don't recall what the breakdown of what the income was and how much came from the mortgage company and how much came from the bank. I looked for them last night. I can't find them.

Q Isn't it a fact that in 2006, you received a W-2 from the mortgage company?

A I know at least from the mortgage company.

Q Right.

A I don't know if that's the only

Flanagan

one. I don't remember and I can't find them.

Q Okay. And did you receive a W-2  
from the mortgage company in 2005?

A Yes.

Q Did you bring that today?

A No.

Q Do you have it?

A I have it somewhere at home.

Q Do you recall if you were paid in  
excess of \$100,000 in 2005?

A Yes.

Q And you were paid in excess of  
\$100,000 in 2005 by HSBC Mortgage Corporation;  
is that right?

A Yes.

MS. HAUGEN: I just want to  
state for the record that when she  
is able to find those, that we will  
produce them in the course of  
discovery.

MR. TICHY: I appreciate  
that.

BY MR. TICHY:

Q And just so the record's clear, I

1 Flanagan

2 started to look at that one. You  
3 said to wait.

4 Q Okay. Let me show you Defendants'  
5 Exhibit 10. Would you take a look at that?

6 A Uh-hum.

7 Q Okay. This purports to be a job  
8 description for the Premier mortgage sales  
9 officer position of the mortgage company.

10 Do you see that?

11 A Uh-hum.

12 Q And I just read for you the  
13 summary of the position, and you told me that  
14 that was accurate, though, you may have  
15 disagreed as to what was the most important.

16 Was it accurate that during your  
17 time as a Premier mortgage sales officer that  
18 you were responsible for developing and  
19 maintaining long-term referral sources with  
20 realtors, branches, builders, attorneys and  
21 other external sources?

22 A No. It wasn't. That's not the  
23 way that they presented the position at all.

24 Q Okay. Was it your job to counsel  
25 affluent customers on various types of mortgage

Flanagan

financing?

A Yes.

Q And you were to work with them to help them choose a program that best suited their needs?

A Yes.

Q Is that right?

A Uh-hum.

Q And, in fact, that was the case during the entire time that you worked with HSBC Mortgage --

A Always. Well, that's my job. That's any originator's job.

Q Right, and you were, as a Premier mortgage sales officer, responsible for developing, expanding, and retaining customer relationships; is that right?

A Yes.

Q Was one of your functions to educate realtors, attorneys, builders, branches and the public on mortgage programs through seminars?

A No, that was never, that was never brought up to me, no, as part of my job

Flanagan

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description.

Q But did you do that?

A Not as part of that job  
description. I do that because that's what I  
do. But no, it was not told to me, no.

Q But that was part of what you did  
when you were the --

A Part of what I did.

Q -- the Premier mortgage sales  
officer; is that right?

A Yep.

Q You know, when you had these  
seminars did you arrange for a location to  
conduct these seminars?

A Yes.

Q And would you normally get a hotel  
room, or would you --

A No.

Q Would you go to some other site?

A No, it was usually in the branch.

Q So you would normally conduct  
these at the branch; is that right?

A If I had a seminar, it was at the  
branch or at the library. I did one at the

Flanagan

home office?

A No. Most of my time outside -- no, because the home office I was there on the weekends. I did a lot of work on the weekends, Saturday, Sunday, and in the branch. I visited the -- I would say out of all of the time, my home office was where I spent the majority of my time.

Q And a lot of what you did in your home office was to support the sales which you were generating with customers; is that right?

A Oh, absolutely. I would take applications over the phone, send out the packages from the home office. That type of thing.

Q Okay. And these were steps which you took prior to the meeting with the customers you said, right?

A Yes.

Q And these were steps which you took prior to attending closings --

A Uh-hum.

Q -- which were usually at an escrow company; is that right?

Flanagan

A The attorney's office.

Q Or the attorneys' office?

A Yes.

Q Okay. So all of the work

basically that you were doing at home was in  
preparation for developing a loan opportunity  
and hopefully a sale; is that right?

MS. HAUGEN: Objection. You  
are mischaracterizing her testimony.

A No. I would say no. It was a  
combination of once the loan was in, you know,  
following it up, completing the documentation,  
staying in touch with the processor, you know,  
the person in Buffalo who's handling the loan.

We were -- there was a lot of  
imaging, sending the documents to an imaging  
system, that type of thing that had nothing to  
do with developing new business. It had to do  
with taking care of the business that you had in  
the pipeline.

Q Okay. So the work that you were  
doing at your home office --

A Was more paperwork.

Q -- was a lot of paperwork?



1 Flanagan

2 A Uh-hum.

3 Q And it was, to some extent, phone  
4 calls; is that right?

5 A Uh-hum. Uh-hum.

6 Q Which was all to support the sales  
7 which you were generating; is that right?

8 A Sure.

9 Q Okay. And those were sales which  
10 were the basis of the five referral sources that  
11 you had been working with, the banks, the  
12 attorneys, the realtors?

13 A Uh-hum.

14 Q And -- and the accountants as well  
15 as your preexisting customers; is that right?

16 A And the branch. The branch  
17 people.

18 Q Okay. Fair enough.

19 When you became a Premier mortgage  
20 loan officer, to whom did you report?

21 A I had many bosses. I interacted  
22 and reported to Kevin MacPherson. I also  
23 reported to Eric Liboy and I reported to Mike  
24 Vasami. Kevin was the branch manager.

25 Q Who was Eric Liboy?

Flanagan

Defendants' Exhibit 15 for  
identification, as of this date.)

BY MR. TICHY:

Q Okay. I have given you a document  
which is marked Exhibit Number 15.

Have you ever seen that before?

A Yes.

Q Okay. And is this a document that  
described the incentive program or commission  
arrangement under which you worked in 2006?

A In 2006, yes. There was another  
one after this.

Q Okay. And we will get to that in  
a minute.

So in terms of how you were  
compensated, this document described how the  
system worked, what was added, what was not  
included, what was deducted so that ultimately  
you came to an amount that you were to be paid,  
correct?

A Correct.

MS. HAUGEN: Objection.

It's compound.

Q In a nutshell, it described how

Flanagan

you were to be paid correct?

A It's the commission plan. Yes.

Q If you will look at page 3, do you see that?

A Yes.

Q Okay. There's a reference to withdrawn, declined loans due to error/omissions, okay.

Now, without regard to what is an error or an omission, because that is something that really is a matter between you and the mortgage company, this particular provision is -- deals with the amount of incentive being reduced by an amount equal to a loss or expense; is that right?

A Uh-hum.

Q Is that what you were talking about?

A No.

Q Okay. Fair enough.

But as you understand this particular provision, essentially you got less commission if there were a problem due to an error or omission as described in that

Flanagan

particular section; is that right?

MS. HAUGEN: Take as much  
time as you need to review that.

A No, I don't think that's what this  
means. I don't think that's what this means at  
all.

Q What do you think that means?

A Well, what this is saying is that  
if HSBC incurs a loss or an expense as a result  
of a participant, which would be a loan  
officer's error or omission, which is a  
reportable event -- in other words, if I submit  
an application where I know that there's  
something going on with that application that I  
don't include, which is including, but not  
limited to, falsification of records,  
negligence, that the following action may be  
taken in addition to any other action which  
would be, I guess, disciplinary action, and it  
says a participant's commission incentive shall  
be reduced by an amount equal to the loss or  
expense incurred by HSBC as a result of the  
reportable event.

I don't have any -- I've never had

Flanagan

anything like that happen on my loan nor has  
anybody that I know that works with HSBC have  
anything like that happen to them on a loan.

Q Okay. Fair enough.

Was there ever a time when you  
were given a paycheck by HSBC Mortgage Company  
that you thought was incorrectly calculated?

A You know, I honestly don't  
remember, and it's the type of thing where if it  
did happen, I just would have brought it to my  
manager, we would have gotten it corrected, and  
I just wouldn't have -- it would be gone. I  
just, I really don't -- I can't really -- it  
just would have been resolved.

Q I would have expected nothing  
less, frankly, but I needed you to say that.

A Yeah.

Q Okay. So far as you know, your  
compensation for 2006 was in conformance with  
Exhibit Number 15?

A Yes, it doesn't mention the  
sign-on bonus. That's the only thing that's not  
in here because it was something I think that  
was negotiated, you know, with me.

C E R T I F I C A T E

STATE OF \_\_\_\_\_:

COUNTY/CITY OF \_\_\_\_\_:

Before me, this day, personally appeared  
KAREN FLANAGAN, who, being duly sworn, states  
that the foregoing transcript of her  
Deposition, taken in the matter, on the date, and  
at the time and place set out on the title page  
hereof, constitutes a true and accurate transcript  
of said deposition.

\_\_\_\_\_  
KAREN FLANAGAN

SUBSCRIBED and SWORN to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2008, in the  
jurisdiction aforesaid.

\_\_\_\_\_  
My Commission Expires

\_\_\_\_\_  
Notary Public

# **EXHIBIT H**

**CERTIFIED COPY**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PHILIP WONG, FREDERIC CHAUSSY,  
And LESLIE MARIE SHEARN,  
Individually, on behalf of all  
Others similarly situated, and  
On behalf of the general public,  
Plaintiffs,

vs.

NO. 3:07-CV-2446 MMC

HSBC MORTGAGE CORPORATION (USA)  
HSBC BANK, USA, N.A.; and  
DOES 1 through 50, inclusive,  
Defendants.

---

DEPOSITION OF PHILIP WONG

SAN FRANCISCO, CALIFORNIA

NOVEMBER 29, 2007

Reported by Yvonne Fennelly, CSR No. 5495

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29

1 A. Yes.

2 Q. Were you still participating after that in a  
3 commission arrangement?

4 A. As in receiving commissions?

5 Q. Yes.

6 A. Yes, I believe so.

7 Q. Did the percentage of commission that you  
8 received during the first year of your employment remain  
9 constant throughout the entire period?

10 A. No.

11 Q. What were the commission percentages which you  
12 were provided during your first year of employment?

13 A. Can you be more specific?

14 Q. Well, why don't you describe the commission  
15 arrangement which you had with the mortgage company when  
16 you were working for the mortgage company during your  
17 first year of employment.

18 A. Depending on the size of the loan.

19 Q. Can you describe what that arrangement was?

20 A. However, it's different due to the fact that we  
21 do have our application fee being withdrawn from our own  
22 personal payroll.

23 Q. Will you explain that to us?

24 A. If there was a loan that was declined, and the  
25 application fee gets withdrawn from our commission.

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1 Q. So if an individual who is seeking a loan  
2 submits an application fee, that application fee would  
3 be considered part of the income for which a commission  
4 would be paid if the loan goes through; is that right?

5 A. Can you rephrase the question, please.

6 Q. Well, why don't you explain it to me.

7 A. If there was a client seeking a loan and the  
8 loan file was declined due to our underwriting  
9 guidelines, then that application fee is withdrawn from  
10 our paycheck.

11 Q. Does the application fee get added to your  
12 paycheck in some way if the loan goes through?

13 A. No.

14 Q. Let me see if I understand this: How much is  
15 an application fee?

16 A. \$325.

17 Q. Okay.

18 So if an application is submitted, the  
19 individual pays \$325; and if the loan is not approved,  
20 your compensation is reduced by \$325; is that what  
21 you're saying?

22 A. No.

23 Q. Well, then will you clarify that for me,  
24 please.

25 A. If an applicant submits an application, it goes

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REPORTER'S CERTIFICATION

You, Yvonne Fennelly, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, you have subscribed my name this 14th day of December, 2007.

/s/ Yvonne Fennelly

Yvonne Fennelly, CRP, CSR No. 5495

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